

BREAKING NEWS Regarding the MA Earned Sick Leave Law: AG Issues Limited Safe Harbor For Employers With Existing PTO Policies

Today, the Massachusetts Attorney General's Office released a statement providing that some employers with existing paid time off policies will have a safe harbor for complying with the MA Earned Sick Leave law through December 31, 2015. The AG's statement can be found here: <http://www.mass.gov/ago/docs/workplace/earned-sick-time/est-safe-harbor.pdf>.

Impact:

1. For employers who had a policy in place as of 5/1/15 by which the employer offers all employees at least 30 hours of PTO in calendar year 2015, you are now considered to be in compliance with the sick leave law through 12/31/15.
2. For employers who had a policy in place as of 5/1/15 by which the employer offers some – but not all – employees at least 30 hours of PTO in calendar year 2015, you are considered to be in compliance through 12/31/15 only as to those employees who currently receive the 30 hours of PTO.
 - If you grant your PTO allowance of 30 hours to those employees who do not currently receive the 30 hours, you will be considered to be in compliance as to all employees.
 - If you do not extend the conditions of your pre-existing policy to the other employees, you will be required to create a new policy for them that fully complies with the MA Earned Sick Leave law by 7/1/15.
3. For employers who had no policy in place as of 5/1/15 by which the employer offered at least 30 hours of PTO to any employees, this safe harbor does not help you at all. You will be required to create a new policy that fully complies with the MA Earned Sick Leave law by 7/1/15.

For employers who will be able to make use of the safe harbor, you will be in full compliance as long as you (1) provide this leave as job-protected leave and (2) comply with the law's non-retaliation and non-interference provisions. Otherwise, you are free to administer this PTO per the terms of your policy in effect as of 5/1/15.

Nevertheless, on or before January 1, 2016, all employers – including those operating under this safe harbor – will be required to comply fully with the terms of the Earned Sick Leave law.

MBJ attended the AG's public comment hearing held in Boston today, May 18, 2015. We learned that the AG intends to issue final regulations by June 19, 2015. We will continue to monitor this and keep you apprised of any developments. Please do not hesitate to contact your MJB attorney with questions.